

PRINCIPLES AND VALUES IN SENTENCING POLICY

JULY 9, 2018

CONSTITUTIONAL REQUIREMENTS

- **EIGHTH AMENDMENT**

- NO CRUEL OR UNUSUAL PUNISHMENT
 - PROPORTIONATE (THE PUNISHMENT MUST FIT THE CRIME)
- NO EXCESSIVE FINES
 - MUST BE REASONABLE AND RELATED TO THE COSTS ASSOCIATED WITH THE CRIME

CONSTITUTIONAL REQUIREMENTS

- **FIFTH AND FOURTEENTH AMENDMENTS**
 - DUE PROCESS
 - CRIMINAL PUNISHMENTS MUST BE FUNDAMENTALLY FAIR
 - EQUAL PROTECTION
 - CRIMINAL PUNISHMENTS MUST TREAT SIMILARLY SITUATED PEOPLE EQUALLY

POLICY VALUES

- **PUBLIC SAFETY**
 - REMOVING A PERSON FROM SOCIETY TO KEEP THE PUBLIC SAFE
 - DETERRING AND PREVENTING FUTURE CRIMES
 - PUBLIC SAFETY IS THE PRINCIPLE FOCUS OF CRIMINAL SENTENCING
 - PUBLIC SAFETY TRUMPS OTHER PRINCIPLES AND VALUES WHEN THERE IS A CONFLICT

POLICY VALUES

- **PUBLIC SAFETY / DETERRENCE**
 - DETERRENCE IS MORE EFFECTIVE FOR SOME CRIMES THAN OTHERS
 - MORE EFFECTIVE: DELIBERATIVE CRIMES WHERE A POTENTIAL CRIMINAL **KNOWS** ABOUT THE LAW
 - LESS EFFECTIVE: REACTIONARY CRIMES WHERE A POTENTIAL CRIMINAL IS ACTING OUT OF FEAR, INSTINCT, OPPORTUNISM, OR ADDICTION

POLICY VALUES

- **REHABILITATION OF THE CRIMINAL**
 - REDUCING FUTURE CRIMES (RECIDIVISM) THROUGH TREATMENT PROGRAMS, JOB TRAINING PROGRAMS, THERAPY, AND EDUCATION
 - EVENTUALLY, MOST PRISONERS WILL BE RELEASED
 - REHABILITATION EFFORTS ARE AIMED AT DECREASING A PERSON'S RISK FACTORS FOR THE BENEFIT OF PUBLIC SAFETY IN THE FUTURE

POLICY VALUES

- **RESTITUTION TO THE VICTIMS**
 - TO THE EXTENT POSSIBLE IN A CRIMINAL SETTING, ENSURE THAT VICTIMS RECEIVE PAYMENT FOR THEIR LOSSES
 - ENSURE THAT VICTIMS HAVE ACCESS TO CIVIL COURTS FOR ADDITIONAL RECOVERY
 - ENSURE THAT VICTIMS ACTUALLY RECEIVE THE RESTITUTION

POLICY VALUES

- **RETRIBUTION**
 - PUNISHMENT FOR PUNISHMENT'S SAKE
 - CAN BE IMPORTANT FOR THE PUBLIC PERCEPTION OF THE JUSTICE SYSTEM
 - SHOULD NEVER TRUMP PUBLIC SAFETY

AREAS OF CONFLICT

- **EXAMPLES:**

- YOU WANT A PERSON TO GO TO PRISON FOR A LONG TIME, BUT THE VICTIM DESPERATELY NEEDS RESTITUTION. (RESTITUTION V. RETRIBUTION)
- YOU WANT A PERSON TO GO TO PRISON FOR A LONG TIME, BUT A LENGTHY PRISON SENTENCE WILL INCREASE THE RISK TO PUBLIC SAFETY. (PUBLIC SAFETY V. RETRIBUTION)
- A PERSON HAS COMMITTED A MINOR OFFENSE, BUT YOU ARE SURE THAT HE IS A SERIOUS RISK TO PUBLIC SAFETY. (PROPORTIONALITY V. PUBLIC SAFETY)

GENERAL POLICY PRINCIPLES

- **AVOID ONE-WAY RATCHET**

- IT IS EASIER TO INCREASE PENALTIES THAN IT IS TO DECREASE PENALTIES
- THERE IS A CEILING BASED ON CONSTITUTIONAL AND PRACTICAL ISSUES
- ANY ENHANCEMENT OF PENALTIES SHOULD BE CAREFULLY SCRUTINIZED TO DETERMINE WHETHER IT PROMOTES PUBLIC SAFETY, REHABILITATION, AND RESTITUTION
- IF CRIME A SEEMS MORE SERIOUS THAN CRIME B, CONSIDER LOWERING THE PENALTY FOR CRIME B INSTEAD OF RAISING THE PENALTY FOR CRIME A.

GENERAL POLICY PRINCIPLES

- **AVOID USING SENTENCING TO SIGNAL VALUES**
 - IF YOU WANT TO SIGNAL TO THE PUBLIC THAT UTAH VALUES SOMETHING, IT IS BEST TO DIRECT RESOURCES (TIME AND MONEY) TO THAT THING.
 - INCREASING CRIMINAL PENALTIES TO SIGNAL VALUES COMES AT A GREAT COST:
 - IF EVERYONE DOES IT, THE SYSTEM BECOMES UNTENABLE
 - INCREASED INCARCERATION RATES CREATE EXPONENTIAL COSTS OVER THE YEARS
 - SIGNALING VALUES SHOULD NEVER HARM PUBLIC SAFETY

GENERAL POLICY PRINCIPLES

- **AVOID POLICY MAKING BY ANECDOTE**

- THERE WILL ALWAYS BE A CASE THAT IS PARTICULARLY EGREGIOUS AND WILL SEEM TO WARRANT A CHANGE IN THE LAW. BEFORE YOU DO SO, CONSIDER:

- IS THERE EVIDENCE TO SHOW THAT THE CURRENT CASE IS PART OF A TREND, OR IS IT AN UNFORTUNATE OUTLIER?
- WILL THE PROPOSED CHANGE IN SENTENCING POLICY ACTUALLY ADDRESS THE PROBLEM WITH THE CURRENT CASE?
- WILL FIXING THE PROBLEM IN THE CURRENT CASE CREATE MORE PROBLEMS IN OTHER CASES?

GENERAL POLICY PRINCIPLES

- **AVOID CRIMINALIZING NEGLIGENT BEHAVIOR**

- **MALUM IN SE**: SOMETHING THAT IS INHERENTLY BAD. THE CRIME AND THE HARM ARE CONNECTED.
 - EXAMPLES: MURDER, RAPE, BURGLARY, ETC.
- **MALUM PROHIBITUM**: SOMETHING THAT IS BAD BECAUSE IT HAS BEEN CRIMINALIZED. THE CRIME AND THE HARM ARE ONLY POTENTIALLY CONNECTED.
 - EXAMPLES: FAILURE TO APPEAR, BUILDING WITHOUT A LICENSE, COPYRIGHT INFRINGEMENT, PARKING VIOLATIONS, FAILURE TO REPORT, ETC.

THE SENTENCING COMMISSION IS A RESOURCE

- MADE UP OF 27 EXPERTS FROM ALL PARTS OF THE CRIMINAL JUSTICE SYSTEM
- TASKED WITH ADVISING ALL THREE BRANCHES OF THE UTAH GOVERNMENT ON CRIMINAL SENTENCING POLICY
- HAS SUBCOMMITTEES THAT CAN HAMMER OUT IMPORTANT DETAILS WITH THE NECESSARY STAKEHOLDERS
- HAS ACCESS TO DATA AND RESEARCH TO SUPPORT CRIMINAL JUSTICE POLICY